

APPEAL NO. 040935
FILED JUNE 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 22, 2004. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. The appellant (carrier) appealed this determination. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the qualifying period for the fourth quarter of SIBs was from September 13 through December 12, 2003. The claimant asserted that during the qualifying period in dispute she was enrolled in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. At issue was the satisfactory participation provision in Rule 130.102(d)(2).

The claimant's amended Individualized Plan for Employment (IPE) dated August 27, 2003, has a criteria of a "2.0 GPA and 12 credit hours each semester." The claimant testified that for the fall semester, beginning on September 25, 2003, and ending December 11, 2003 (which encompassed the qualifying period), she enrolled for four, 3-credit hour courses for a total of 12-credit hours; however, she withdrew from one 3-credit hour course on November 26, 2003, because she was failing this course. The claimant testified that her TRC counselor was aware of her withdrawing from her course and that the TRC continued to sponsor her after she withdrew. The carrier contends that the claimant did not maintain 12-credit hours for the semester as listed in the IPE criteria and that this constitutes unsatisfactory participation in the TRC program.

The question of whether the claimant satisfactorily participated in the full-time TRC program presents a question of fact for the hearing officer to resolve. In Texas Workers' Compensation Commission Appeal No. 010952-s, decided June 20, 2001, we held that a claimant's testimony may support a determination that the claimant satisfied the good faith job search requirement under Rule 130.102(d)(2) for full-time participation in a vocational rehabilitation program sponsored by the TRC, and documentary evidence was not absolutely required. The hearing officer found that the claimant met the requirement to attempt in good faith to obtain employment commensurate with the

claimant's ability to work by being enrolled in, and satisfactorily participating in, a full-time vocational rehabilitation program sponsored by the TRC. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's SIBs determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge